

ENVIRONMENTAL QUALITY

CHAPTER 8

AIR QUALITY

Sub-Chapter 9

Permit Requirements for Major Stationary Sources
or Major Modifications Locating Within Nonattainment Areas

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Sub-Chapter 9

Permit Requirements for Major Stationary Sources or
Major Modifications Locating Within Nonattainment Areas

17.8.901 DEFINITIONS In this subchapter the following definitions apply:

(1) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with (1)(a) through (c).

(a) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The department may determine that a different time is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) If the department is unable to determine actual emissions consistent with (1)(a), the department may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

(a) the applicable standards as set forth in ARM 17.8.340 or 17.8.341;

(b) the applicable emissions limitation contained in the Montana state implementation plan, including those with a future compliance date; or

(c) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(3) "Begin actual construction" means, in general, initiation of physical on-site construction activities of a permanent nature on an emissions unit. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(4) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on 1 or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., having the same 2-digit code) as described in the standard industrial classification manual, 1987.

(5) "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(6) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(7) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the FCAA.

(8) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana state implementation plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the Montana state implementation plan and expressly requires adherence to any permit issued under such program.

(9) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(10) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(a) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) the most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance under 40 CFR Parts 60 and 61.

(11) "Major modification" means any physical change in, or change in the method of, operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the FCAA.

(a) Any net emissions increase that is considered significant for volatile organic compounds is considered significant for ozone.

(b) A physical change or change in the method of operation does not include:

(i) routine maintenance, repair and replacement;

(ii) use of an alternative fuel or raw material by reason of an order under (2)(a) and (2)(b) of the Energy Supply and Environmental Coordination Act of 1974, 15 USC 791, et seq. (1988), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act, 16 USC 791a, et seq. (1988 and Supp. III 1991);

(iii) use of an alternative fuel by reason of an order or rule under section 125 of the FCAA;

(iv) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) use of an alternative fuel or raw material by a stationary source which:

(A) the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, or section 51.166; or

(B) the source is approved to use under any permit issued under regulations approved pursuant to 40 CFR 51.165;

(vi) an increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable air quality preconstruction permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, or section 51.166;

(vii) any change in ownership at a stationary source.

(12) The following apply to the definition of the term "major stationary source":

(a) "major stationary source" means:

(i) any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the FCAA; or

(ii) any stationary source of air pollutants located in a serious particulate matter (PM-10) nonattainment area which emits, or has the potential to emit, 70 tons per year or more of PM-10; or

(iii) any physical change that would occur at a stationary source not qualifying under (i) or (ii) above as a major stationary source, if the change would constitute a major stationary source by itself.

(b) The fugitive emissions of a stationary source will not be included in determining, for any of the purposes of this subchapter, whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (i) coal cleaning plants (with thermal dryers);
- (ii) kraft pulp mills;
- (iii) Portland cement plants;
- (iv) primary zinc smelters;
- (v) iron and steel mills;
- (vi) primary aluminum ore reduction plants;
- (vii) primary copper smelters;
- (viii) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) hydrofluoric, sulfuric, or nitric acid plants;
- (x) petroleum refineries;
- (xi) lime plants;
- (xii) phosphate rock processing plants;
- (xiii) coke oven batteries;
- (xiv) sulfur recovery plants;
- (xv) carbon black plants (furnace process);
- (xvi) primary lead smelters;
- (xvii) fuel conversion plants;

- (xviii) sintering plants;
- (xix) secondary metal production plants;
- (xx) chemical process plants;
- (xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) taconite ore processing plants;
- (xxiv) glass fiber processing plants;
- (xxv) charcoal production plants;
- (xxvi) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and
- (xxvii) any other stationary source category which, as of August 7, 1980, is being regulated under sections 111 or 112 of the FCAA.

(13) "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the Montana state implementation plan.

(14) The following apply to the definition of the term "net emissions increase":

(a) "net emissions increase" means the amount by which the sum of the following exceeds zero:

(i) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(ii) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commenced, and the date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.165, which permit is in effect when the increase in actual emissions from the particular change occurs.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) it is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) the department has not relied on it in issuing any Montana air quality permit under regulations approved pursuant to 40 CFR Part 51, subpart I (July 1, 1993 ed.), or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(iv) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(15) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(16) "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are required by the FCAA or the administrator for attainment of the applicable national ambient air quality standard by the date required in section 172(a) of the FCAA.

(17) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this chapter, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or

major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(18) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

<u>Pollutant and Emission Rate</u>	
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy of particulate matter emissions or 15 tpy of PM-10 emissions
Lead:	0.6 tpy

(19) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the FCAA.

(20) "Volatile organic compounds (VOC)" means the same as defined in 40 CFR 51.100(s). (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1995 MAR p. 2410, Eff. 11/10/95; AMD, 1996 MAR p. 1843, Eff. 7/4/96; AMD, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1998 MAR p. 1725, Eff. 6/26/98; AMD, 2002 MAR p. 1747, Eff. 6/28/02; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 645, Eff. 4/11/03.)

17.8.902 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) 40 CFR Part 60, pertaining to standards of performance for new stationary sources;

(b) 40 CFR Part 61, pertaining to emission standards for hazardous air pollutants;

(c) 40 CFR 81.327, pertaining to the air quality attainment status designations for Montana;

(d) section 173 of the FCAA, as codified in 42 USC 7503, pertaining to permit requirements for permit programs in nonattainment areas;

(e) sections 188 through 190 of the FCAA, as codified in 42 USC 7513 through 7513b, pertaining to additional requirements for particulate matter in nonattainment areas; and

(f) the Standard Industrial Classification Manual (1987), Office of Management and Budget (PB 87-100012), pertaining to a system of industrial classification and definition based upon the composition and structure of the economy.

(2) A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained from:

(a) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone: (800) 553-6847 or (703) 605-6000; fax: (703) 605-6900; email: orders@ntis.gov; web: <http://www.ntis.gov>;

(b) National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242-0419; phone: (800) 490-9198 or (513) 489-8190; fax: (513) 489-8695; email: ncepimal@one.net; web: <http://www.epa.gov/ncepihom>;

(c) U.S. Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250-7954; phone: (866) 512-1800 or (202) 512-1800; fax: (202) 512-2104; email: orders@gpo.gov; web: <http://www.gpoaccess.gov>; and

(d) the libraries of each of the 10 EPA regional offices.

(4) Copies of the CFR may be obtained from the U.S. government printing office, as described in (3)(c).

(5) The Standard Industrial Classification Manual (1987) may be obtained from the NTIS, as described in (3)(a). (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2828, Eff. 10/28/94; AMD, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1997 MAR p. 1581, Eff. 9/9/97; AMD, 2001 MAR p. 1468, Eff. 8/10/01; AMD, 2003 MAR p. 645, Eff. 4/11/03; AMD, 2005 MAR p. 959, Eff. 6/17/05.)

Rule 17.8.903 reserved

17.8.904 WHEN MONTANA AIR QUALITY PERMIT REQUIRED

(1) Any new major stationary source or major modification which would locate anywhere in an area designated as non-attainment for a national ambient air quality standard under 40 CFR 81.327 and which is major for the pollutant for which the area is designated nonattainment, shall, prior to construction, obtain from the department a Montana air quality permit in accordance with subchapter 7 and all requirements contained in this subchapter if applicable. A major stationary source or major modification exempted from the requirements of subchapter 7 under ARM 17.8.744 and 17.8.745 which would locate anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 and which is major for the pollutant for which the area is designated nonattainment, shall, prior to construction, still be required to obtain a Montana air quality permit and comply with the requirements of ARM 17.8.748, 17.8.749, 17.8.756, 17.8.759 and 17.8.760 and with all applicable requirements of this subchapter.

(2) Any source or modification located anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 which becomes a major stationary source or major modification for the pollutant for which the area is designated nonattainment solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant (such as a restriction on hours of operation) shall obtain from the department a Montana air quality permit as though construction had not yet commenced on the source or modification, in accordance with subchapter 7 and all requirements of this subchapter. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02.)

17.8.905 ADDITIONAL CONDITIONS OF MONTANA AIR QUALITY PERMIT

(1) The department shall not issue a Montana air quality permit required under ARM 17.8.904, unless the requirements of subchapter 7 and the following additional conditions are met:

(a) The permit for the new source or modification contains an emission limitation which constitutes the lowest achievable emissions rate for such source.

(b) The applicant certifies that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the state of Montana are in compliance with all applicable emission limitations and standards under the FCAA or are in compliance with an expeditious schedule of compliance which is federally enforceable or contained in a court decree.

(c) The new source obtains from existing sources emission reductions (offsets), expressed in tons per year, which provide both a positive net air quality benefit in the affected area in accordance with ARM 17.8.906(7) through (9), and a ratio of required emission offsets to the proposed source's emissions of 1:1 or greater. The emissions reductions (offsets) required under this subsection must be:

(i) obtained from existing sources in the same non-attainment area as the proposed source, except as specified in ARM 17.8.906(6) (whether or not they are under the same ownership);

(ii) subject to the provisions of ARM 17.8.906;

(iii) sufficient to assure that there will be reasonable progress toward attainment of the applicable national ambient air quality standard;

(iv) for the same pollutant (e.g., carbon monoxide increases may only be offset against carbon monoxide reductions);

(v) permanent, quantifiable, and federally enforceable; and

(vi) reductions in actual emissions.

(d) The Montana air quality permit contains a condition requiring the source to submit documentation, prior to commencement of operation that the offsets required in the permit have occurred.

(e) The applicant submits an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source that demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

(2) Any growth allowances which were included in an applicable state implementation plan prior to November 15, 1990 for the purpose of allowing for construction or operation of a new major stationary source or major modification shall not be valid for use in any area that received or receives a notice from the administrator that the applicable state implementation plan containing such allowances is substantially inadequate.

(3) The requirements of (1)(a) and (c), shall only apply to those pollutants for which the major stationary source or major modification is major and for which the area has been declared nonattainment.

(4) The issuance of a Montana air quality permit shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Montana state implementation plan and any other requirements contained in or pursuant to local, state or federal law. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02; AMD, 2003 MAR p. 645, Eff. 4/11/03.)

17.8.906 BASELINE FOR DETERMINING CREDIT FOR EMISSIONS AND AIR QUALITY OFFSETS (1) Pursuant to section 7503 of the FCAA, emission offsets in nonattainment areas are required to be in the form of, and against, actual emissions. Actual emissions preceding the filing of the application to construct or modify a source are the baseline for determining credit for emission and air quality offsets, as determined in compliance with this subchapter.

(2) Where the emission limitation under the Montana state implementation plan allows greater emissions than the actual emissions of the source, emission offset credit will be allowed only for control below the actual emissions.

(3) For an existing fuel combustion source, credit shall be based on the actual emissions for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offsets credit based on the actual emissions for the fuels involved is not acceptable, unless the Montana air quality permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The department shall ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

(4) Emission reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable

only if it occurred on or after the date specified for this purpose in the Montana state implementation plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977. For purposes of this (4), the department may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current "existing" emissions the emissions from such previously shutdown or curtailed sources. Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source's air quality application is filed, or if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions described earlier in this (4) are observed.

(5) No emissions credit shall be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977).

(6) All emission reductions claimed as offset credit shall be federally enforceable.

(7) Emission offsets may only be obtained from the same source or other sources in the same nonattainment area, except that the department may allow the owner or operator of a proposed source to obtain such emission reductions in another nonattainment area if:

(a) the other nonattainment area has an equal or higher nonattainment classification for the same pollutant than the area in which the proposed source will locate; and

(b) emissions from the other nonattainment area contribute to a violation of a national ambient air quality standard in the nonattainment area in which the proposed source will locate.

(8) In the case of emission offsets involving oxides of nitrogen, offsets will generally be acceptable if obtained from within the same nonattainment area as the new source or from other nonattainment areas which meet the requirements of (6). However, if the proposed offsets would be from sources located at considerable distances from the new source, the department shall increase the ratio of the required offsets and require a showing by the applicant that nearby offsets were investigated and reasonable alternatives were not available.

(9) In the case of emission offsets involving sulfur dioxide, particulates, and carbon monoxides, areawide mass emission offsets are not acceptable and the applicant shall perform atmospheric simulation modeling to ensure that the emission offsets provide a positive net air quality benefit. However, the department may exempt the applicant from the atmospheric simulation modeling requirement if the emission offsets provide a positive net air quality benefit, are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from substantially the same effective stack height.

(10) Credits for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any Montana air quality permit under subchapters 7, 8, 9, and 10, or Montana has not relied on it in a demonstration of attainment or reasonable further progress.

(11) Production of and equipment used in the exploration, production, development, storage, or processing of oil and natural gas from stripper wells, are exempt from the additional permitting requirements of subchapter I, part D, subpart IV of the FCAA, and the application of these additional permitting requirements in this subchapter and subchapter 10 to any nonattainment area designated as serious for particulate matter (PM-10). These sources must comply with all other requirements of section 173 of the FCAA and this subchapter and subchapter 10.

(12) Emission reductions otherwise required by any applicable rule, regulation, Montana air quality permit condition or the FCAA are not creditable as emissions reductions for the purposes of the offset requirement in ARM 17.8.905(1)(c). Incidental emission reductions which are not otherwise required by any applicable rule, regulation, Montana air quality permit or the FCAA shall be creditable as emission reductions for such purposes if such emission reduction meets the requirements of this rule. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3567, Eff. 12/27/02.)

